LIMAN JALIL & ORS.

v.

CREATIVE INVESTMENTS PTE. LTD.

HIGH COURT, SINGAPORE
GOH JOON SENG J
[DISTRICT COURT APPEAL NO. 23 OF 1990]
6 MAY 1991

LANDLORD AND TENANT: *Agreement to quit - Whether enforceable against the tenant - Whether contractually bound to give such notice - Control of Rent Act [Sing], ss. 2, 14, 15(1)(f), 16.*

On 5 March 1983 one AH (the vendors), acting as administrators of the estate of Aboo Kassim, granted an option (the said option) to purchase a property in Pasir Panjang, Singapore (the said land) to WTL and two others (the option holders). The sale was subject to existing tenancies. The late J (the deceased) was the appellants' father and was one of the 44 tenants occupying the land.

On 6 March 1983, the vendors entered into an agreement (the agreement to quit) with J whereby J agreed to vacate the land in consideration of receiving $78,000 (the agreed compensation) from the vendors. J was required to quit the land by 31 August 1983. A sum of $1,000 was paid by J.

On 18 March 1983, WTL and the other two option-holders exercised the said option. By 19 March 1983, the vendors had paid the deceased $7,800 out of the agreed compensation. However, on 24 May 1983, J through his solicitors, told the vendors that he was withdrawing his notice to quit. On 5 June 1984 J died and on 27 September 1984 letters of administration of the estate were granted to the second appellant. On 10 October 1984, the sale and purchase of the land was completed in the name of the respondents who were nominated by the option holders.

Since the appellants continued refusing to vacate the land, the respondents filed these proceedings on 7 September 1989, claiming possession by virtue of the agreement to quit between J and the respondents' predecessors in title.

The trial Judge gave the respondents an order of possession and for *mesne profits*. The appellants appealed.

Held:

[1] The agreement to quit entered into by J (the tenant) with the vendors is not enforceable against J (the tenant), and the appellants, who are members of J's family, within the meaning of s. 2 read with s. 16(c) of the Control of Rent (the Act). However, the question is whether agreement to quit is enforceable against the appellants under s. 15(1)(f) of the Act.

[2] The notice to quit given by J in exchange for part payment of the agreed compensation was an integral part of the transaction by which J agreed to quit the land for the total consideration of $78,000. It was not a notice that J had the right to give against the will of the landlord but rather a notice he was contractually bound to give. Accordingly, it was not a valid notice to quit which entitled the Court to make an order for possession against the appellants under s. 15(1)(f) of the Act.

[Appeal allowed.]

Cases referred to:
Tayleur v. Wildin LR 3 Ex 303 ***(cit)***
Tan Cheng Wee v. Ng Hye Kok [1966] 1 MLJ 209 ***(cons)***
Barton and Mitchell v. Fincham [1921] All ER Rep 87 ***(cons)***

Legislation referred to:
Control of Rent Act [Sing], ss. 2, 14, 15(1)(f), 16(c)
Increase of Rent and Mortgage Interest (Restriction) Act 1920 [UK], s. 5(1)(c)
Rent Restriction Act 1920 [UK], s.5
Rent Restriction Act 1923 [UK], s. 4(1)(c)

Other source referred to:
R.E. Megarry on The Rent Act Vol. 1 11th Edn.,

For the appellants - J.B. Jeyaretnam
For the respondents - Dennis Singham

JUDGMENT

Goh Joon Seng J:

This is an appeal by the 2nd and 3rd defendants (the defendants') against the decision of the learned District Judge given on 19 May 1990 ordering the defendants to deliver up to the plaintiffs vacant possession of the premises known as No. 25-D Lorong Abu Kassim, Singapore on or before 18 June 1990.

The defendants were also ordered to pay mesne profits at the rate of $6 per month from 31 August 1983 to date of delivery of possession. See pp. 156-157 of the record of appeal.

I shall now outline the factual background leading to these proceedings.

On 5 March 1983 in consideration of the sum of $7,000 one Abdul Hadi bin Abu Kassim also spelt as Aboo Kassim and one Mohammed Esa bin Abu Kassim also spelt as Mohamed Isah bin Abu Kassim (the vendors) acting as administrators of the estate of Aboo Kassim bin Mohamed Ariff also spelt as Abu Kassim deceased granted to one Wang Toon Luan, Richard George Tan and Chin Wui Lin an option (the said option) to purchase the property known as Lot 104 Mukim 3 in the District of Pasir Panjang, Singapore, at the price of $6,200,600.60. The land and premises (the said premises) which are the subject matter of these proceedings stand on part of this parcel of land. The sale is subject to existing tenancies listed in the schedule annexed to the said option. The late Jalil bin Ludin (the deceased) was the father of the defendants and was one of the forty-four tenants on the said parcel of land. See pp. 162 and 170 of the record of appeal.

On 6 March 1983 the vendors, as landlords entered into an agreement (the agreement to quit) with the deceased as tenant whereby the deceased agreed in consideration of the sum of $78,000 to quit and vacate the said premises.

Clause 1 of the agreement to quit reads:

> In consideration of the sum of dollars one thousand ($1,000) now paid by the land owners to the tenant ... the tenant hereby gives the land owners notice to quit the whole of the said premises hereinbefore described on the 31st day of August 1983 and to deliver up vacant possession of the whole of the said premises to the land owners.

The sum of $1,000 was paid to the deceased as evidenced by his receipt dated 6 March 1983. See p. 176 of the record of appeal. On the same day the deceased as tenant served on the vendors as landlords his notice to quit the said premises on 31 August 1983. See p. 197

of the record of appeal. On 18 March 1983, the said option to purchase was exercised by the said Wong Toon Luan, Richard George Tan and Chin Wui Lin.

The acceptance is in p. 177 of the record of appeal. Consequently a further sum of $6,800 payable under cl. 3(2) of the agreement to quit was paid to the deceased on 19 March 1983. See p. 179 of the record of appeal.

On 24 May 1983, the deceased through his solicitors M/s. J.B. Jeyaretnam & Co. resiled from the agreement to quit and purported to 'withdraw' the notice to quit. See p. 180 of the record of appeal.

On 5 June 1984 the deceased passed away. See p. 80 of the record of appeal. On 27 September 1984 letters of administration of the estate of the deceased were granted to the 2nd defendant. See p. 7 of the record of appeal.

On 10 October 1984, the sale and purchase of the said parcel of land was completed in the name of the plaintiffs who were nominated to complete the same by the option holders Wang Toon Luan, Richard George Tan and Chin Wui Lin.

Since the defendants failed to vacate by 31 August 1983 and continued refusing to do so, the plaintiffs filed these proceedings on 7 September 1989. The plaintiffs' claim as appears in the amended statement of claim is as owner of the land on which the premises occupied by the defendants stand. By paras. 5 and 6 of the amended statement of claim, the plaintiffs claim possession by virtue of the agreement to quit entered into between the deceased and the plaintiffs' predecessors in title (the vendors). Paragraph 3 of the amended reply refers to 'the notice given by the deceased under the agreement that he would quit and/or surrender his tenancy and deliver vacant possession of the said premises', and contends that the same 'cannot be withdrawn and such is still binding upon him', that is, the deceased.

At the hearing in the Court below Counsel for the defendants raised a number of issues. But principally the contentions of the defence were:

(1) There was no proper assignment of the vendor's rights under the agreement to quit to the plaintiffs and the plaintiffs not being a party to the agreement to quit could not seek to enforce the same; and

(2) The notice to quit given by the deceased had been withdrawn before the effective date.

On issue (1) herein the trial Judge held that although the plaintiffs were not a party to the agreement to quit, they paid the two sums of $1,000 and $6,800 to the deceased and hence there was an 'equitable assignment' of the benefit of the agreement to quit to the plaintiffs who could therefore enforce the same.

On issue (2) herein the trial Judge held following *Tayleur v. Wildin* LR 3 Ex. 303 that a notice to quit once given by one party cannot be withdrawn without the consent of the other.

Accordingly an order for possession was made under s. 15(1)(f) of the Control of Rent Act (the Act) and for *mesne profits* in favour of the plaintiffs and against the defendants as aforesaid.

The defendants appealed. The appeal came up for hearing before me. I allowed the appeal. Plaintiffs now appeal to the Court of Appeal. I now give my reasons for allowing the appeal.

At the hearing before me Counsel for both parties confirmed the following :

(i) There is no dispute that the said premises are 'domestic premises' within s. 16 of the Act and that the Act applies to the said premises;

(ii) That the defendants are the sons of the deceased and at all material times were over 16 years of age;

(iii) At the time the agreement to quit was entered into the deceased was a contractual tenant;

(iv) The notice to quit the said premises by 31 August 1983 was given pursuant to the agreement to quit;

(v) The agreement was resiled by the deceased on 24 May 1983 with an offer to refund the $7,800 paid to the deceased. The $7,800 has been deposited with the defendants' solicitors M/s. J.B. Jeyaretnam & Co.

It has also been conceded in the Court below that the defendants were at all material times and are still residing at the said premises. See p. 84 of the record of appeal. Originally it was alleged that only Mohd bin Jalil the 3rd defendant was in occupation with the deceased. See para. 2 of the amended statement of claim.

An agreement to quit by a tenant of premises governed by the Act is not enforceable against the tenant.

> Notwithstanding the absence of any express statutory provisions, it is impossible to contract out of the Acts, whether by a provision in a lease or tenancy agreement or otherwise, nor can the doctrine of estoppel exclude the Acts. An agreement by a tenant to pay more than the rent permitted by the Acts, or obliging him (even indirectly) to give up possession where the Acts do not require him to do so, is void so far as it conflicts with the Acts and will not be specifically enforced at the suit of the landlord. On the other hand there is nothing to prevent the tenant from voluntarily giving up possession if he wishes ...

R.E. Meggary on *The Rent Acts* Vol 1, 11th Edn., at 26-27.

In *Barton and Mitchell v. Fincham* [1921] AER Rep. 87 the tenant of a dwelling house within the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 agreed with the landlord that in consideration of a payment of £20 made to her by the landlord she would leave the house at the following Michaelmas. The landlord paid £20 and the tenant gave notice to quit on the agreed date. The tenant then refused to give up possession. The Court of Appeal held that the Courts had no power to enforce the agreement as an agreement to quit was not one of the grounds under the Act on which an order for possession against the tenant could be made. No reliance was placed on the notice to quit because under s. 5(1)(c) of the Act, an order for possession could only be made if the tenant had given notice to quit and in consequence of that notice, the landlord had contracted to sell or let the dwelling house, or had taken any other steps, as a result of which he would in the end be seriously prejudiced if he could not obtain possession.

> I agree with the other members of the Court in thinking that the express provisions of s. 5 of the Rent Restrictions Act 1920 make it impossible to uphold the decision of the learned County Court Judge. The section appears to me to limit definitely the jurisdiction of the Court in making ejectment orders in case of premises to which the Act applies. Parties cannot by agreement give the Court jurisdiction which the legislature has enacted they are not to have.
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> (Per Atkin LJ at 91.)

Section 5 of the Rent Restrictions Act 1920 reads :

> No order or judgment for the recovery of possession of any dwelling house to which this Act applies or for the ejectment of a tenant therefrom shall be made unless ...

It is therefore in *pari materia* with s. 14 of our Act.

From the foregoing it is clear that the agreement to quit entered into by the deceased with the vendors is not enforceable against the deceased and the defendants who are members of the family of the deceased within the meaning of s. 2 of the Act read with s. 16(c) of the Act.

The question, not canvassed in the Court below, is whether the notice to quit given by the deceased pursuant to the agreement to quit is enforceable against the defendants under s. 15(1)(f) of the Act.

In *Tan Cheng Wee v. Ng Hye Kok* [1966] 1 MLJ 209, the landlord brought an action to recover possession based on an agreement signed by the tenant to vacate the premises in consideration of the sum of $300. The agreement read:

> Being compelled by circumstances, I Wee Ha Kok (the plaintiff) hereby request the various occupiers to move out within three months from today. Those who are willing please sign their names.
>
> (1) Mr. Tan Ah Wee (the defendant) agrees and signs Tan Cheng Wee received cash three hundred dollars.
>
> (2) Mr. Koh Ya agrees and signs (signature) $300.
>
> (3) Mr. Tan Ah Kim agrees and signs.
>
> (4) Mr. Peh agrees and signs.
>
> (5) Mr. Chin Kee Hia agrees and signs.
>
> Dated 1st day of September 1963.
>
> With respect from
> Brother Wee Ha Kok

Based on the agreement the District Court made an order for possession under s. 15(1)(f) of the Act. On appeal to the High Court the order was set aside.

> The substantial issue argued on the appeal was as to whether the learned District Judge was entitled to make the order for the recovery of possession.
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> Under the Control of Rent Ordinance an order or judgment for possession shall only be made or given in certain specific instances set out in s. 15 of the Ordinance.
>
> For our purposes, the relevant sub-section is s. 15(1)(f) namely 'where the tenancy has been determined by notice to quit given by the tenant'.
>
> The short point for decision is whether the agreement to vacate which I have set out above is a notice to quit given by the tenant within the meaning of s. 15(1)(f).
>
> In my view it is not a notice to quit at all but merely an agreement between the parties that the tenant would give up possession some time within 3 months from 1 September 1963. A notice to quit and an agreement to surrender or determine the tenancy are essentially different in their nature.
>
> An agreement is the result of the consent of the parties whereas a notice to quit is altogether different. The essence of a notice to quit by the tenant is to determine the tenancy whether the landlord like it or not. See *De Vries v. Sparks*, per Buttrose J at 210.

In *De Vries v. Sparks* [1927] Vol. 137, the Law Times 441, the defendant Mrs. Sparks had for many years been the tenant on a weekly tenancy of premises within the Rent Restriction Acts. In May 1926 on the death of certain relatives she desired to leave the house. The

landlord Mr. De Vries was informed by her that she would give up possession in September 1926 or before. The landlord then agreed to pay her £30, £10 forthwith and balance of £20 upon her giving up possession and in meantime she could occupy the premises rent free. The £10 was duly paid by Mr. De Vries to Mrs. Sparks. She in turn gave him a receipt in the following terms:

> 31 May 1926. Received £10 on a/c of £30 for giving up possession of 38, Dale-street, Chiswick, on or before 25 September 1926 - M. Sparks.

Upon that the landlord made an arrangement to sell the house. Subsequently the tenant changed her mind and refused to give up possession. The landlord brought an action to recover possession under s. 4(1)(c) of the Rent Restriction Act 1923. The County Court Judge held that the agreement between the parties although inoperative to deprive the tenant of any of her rights under the Acts was nevertheless operative as a notice to quit by the tenant and in consequence of such notice the landlord had contracted to sell the premises and would be seriously prejudiced if he could not obtain possession. Accordingly the County Court held that the landlord was entitled to possession. On appeal the judgement was reversed.

> The County Court Judge described the defendant as a statutory tenant and I think at the time when the action commenced she had become one. There was certainly evidence on which the County Court Judge could find as a fact that the landlord and tenant at common law had agreed to determine the common law tenancy at the latest on 25 September. In my opinion, that was a valid agreement which had the effect of determining the common law relations and the common law tenancy. By it no greater right could be given to the Court as regards ejectment than the Court would have had without any such agreement. See *Barton v. Fincham (supra)*.
>
> The result of it was that the defendant became a statutory tenant entitled to the protection of the Rent Restriction Acts. The landlord therefore had to show not only a common law right to possession, which in my opinion he had, but also that he fell within one of those cases where the Court has the power to give effect to that common law right, or, in other words, that the case falls within s. 4 subsection 1(c) of the Act of 1923.
>
> Here there is no doubt that in consequence of what the landlord took to be a notice to quit by the tenant, the landlord has contracted to sell this house and has been prejudiced within the meaning of the above subsection. That leaves for determination the question whether there was before the County Court Judge any evidence on which he could rightly find that the tenant had given notice to quit. It is plain that under the above subsection the notice may be either one given by a common law tenant while the common law tenancy still subsists or one given by statutory tenant after the relation of the parties has become statutory. It is not necessary to examine the kind of notice to quit that has to be given by a statutory tenant, because here the tenant, if she gave a notice to quit at all, gave it while she still remained a common law tenant. In my opinion in order to be a notice to quit within the meaning of the above subsection, when given by a common law tenant, it must be a notice to quit which would be valid at common law, and which would have the effect of determining against the will of the landlord an existing common law tenancy ...
>
> The question, therefore, is whether this was a notice to quit which could have been valid to determine, against the will of the landlord, the common law tenancy existing at the time when it was given. In the first place I think it was not a notice to quit at all, but merely an agreement made between the parties that the common law tenancy then subsisting should determine at the latest on 25 September. I think that a notice to quit and an agreement to surrender or determine a tenancy are essentially different in their nature. **An agreement depends on the consent of the parties, whereas a notice to quit differs altogether, in that it is a notice given by one party to the other to exercise a right given under the contract, whether the other party likes it or not.** (Emphasis is mine). Per Salter J at 442-443.

I now turn to the notice to quit of 6 March 1983 given by the deceased and handed over in exchange for the part payment of $1,000. It was an integral part of the transaction by which the deceased agreed to quit the said premises for the total compensation money amounting to $78,000. It is not a notice that the deceased had the right to give against the will of the landlord but rather a notice he was contractually bound to give. Accordingly I am of the view that it was not a valid notice to quit which entitled the Court to make an order for possession against the defendants under s. 15(1)(f) of the Act and the appeal should be allowed.

Also found at [1991] 3 CLJ 2709